

Town of Hot Sulphur Springs

C O L O R A D O

FAX TRANSMITTLE

ATTENTION: BLM Colorado State Office

FAX #: (303) 239-3799

OF PAGES: 23

FROM: Robert McVay - Mayor

(970) 725-3443 FAX

DATE: 4/5/17 TIME: 11:08 Am

ANY QUESTIONS PLEASE CALL!
970-725-3933

513 Aspen Street • PO Box 116 • Hot Sulphur Springs, CO 80451
Phone (970) 725-3933 • Fax (970) 725-3443

Town of Hot Sulphur Springs

C O L O R A D O

March 30, 2017

Colorado State Office of the BLM
2850 Youngfield St.
Lakewood, CO 80215

Subject: Protest of the June 8, 2017 Competitive Oil and Gas Sale

The Board of Trustees of the Town of Hot Sulphur Springs protests the decision to go forward with the June 8, 2017 Competitive Oil and Gas Sale for the following parcels in Grand County: COC78284, COC78285, COC78286, COC78287, COC78288, COC78289, COC78290, COC78291, COC78292, COC78293, COC78294, COC78300, COC78301, COC78302, COC78303, COC78304, COC78295, COC78296, COC78314, COC78315.

Based on information derived from a 1999 Community Master Plan and a 2015 Parks Recreation and Open Space Master Plan, the residents of Hot Sulphur Springs highly value the area's traditional rural character and its scenic, natural setting along the Colorado River surrounded by open hillsides and forested mountains of the BLM and Arapaho National Forest. The Colorado River Headwaters National Scenic Byway (Highway 40) passes through town. Outdoor recreation and tourism are major contributors to the area's economy. Many of the town residents enjoy hunting, fishing, hiking, skiing, snowmobiling and other opportunities that the natural resources of the surrounding public lands provide. A survey for the Parks Master Plan found that town residents have an active lifestyle with fifty seven percent reporting that they typically recreate outdoors five to seven days per week in summer with less activity in the winter.

We are protesting the oil and gas lease sale because the potential for adverse effects from possible exploration and development resulting from the lease sale would cause significant harm to the environment and economic wellbeing of town and area residents. While the EA contends that the oil and gas lease sale by itself will have no direct environmental consequences, exploration and development are reasonable foreseeable actions which will occur to some extent as a result of this sale. In fact, the EA states this in numerous places. And it is clear that exploration and development have the potential for causing significant direct, indirect and cumulative negative effects to the environment, quality of life of area residents, and local economy. The EA recognizes the potential for these significant effects of which we

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are highly concerned. In spite of the proposed stipulations intended to prevent or minimize negative effects, the high potential for them to occur remains and some cannot be avoided. Our comments on the Preliminary EA provide further description of the potential adverse effects and reasons for our protest. Those comments are hereby incorporated (and attached) as part of our protest.

Additionally, the EA (p. 13) explains that,

"the Mineral Leasing Act of 1920, as amended, and the Mineral Leasing Act for Acquired Lands of 1947, as amended, authorize oil and gas leasing on BLM, national forest, and other Federal lands, as well as State and private surface lands where mineral rights have been retained by the Federal government. Under these laws, BLM is required to hold quarterly oil and natural gas lease sales in each state where lands are available."

While the law may require the BLM to hold oil and gas lease sales, you are not required to hold these lease sales everywhere, on every acre, and we request that you use your discretion to eliminate those areas from lease sale where the public has indicated it would be inappropriate. As indicated by the numerous comments to the Preliminary EA in opposition to the proposed lease sale, the referenced parcels identified in this protest clearly fit this description and should be eliminated from the June 8, 2017 lease sale.



Robert McVay
Mayor

Attachment: Comments on the Preliminary Environmental Assessment for the May 11, 2017 Competitive Oil and Gas Lease Sale.

Town of Hot Sulphur Springs

C O L O R A D O

BLM White River Field Office
Attn: May 2017 Lease Sale
220 E. Market Street
Meeker, CO 81641

Subject: Comments on the Preliminary Environmental Assessment for the May 11, 2017 Competitive Oil and Gas Lease Sale.

The Hot Sulphur Springs Town Board of Trustees voted unanimously to submit the following comments to the subject Preliminary Environmental Assessment (EA).

As described in our previously submitted scoping comments, Hot Sulphur Springs is a town of approximately 650 residents with many more living in the surrounding unincorporated Grand County. It is the county seat. Based on information derived from a 1999 Community Master Plan and a 2015 Parks Recreation and Open Space Master Plan, the residents highly value the town's traditional rural character and its scenic, natural setting along the Colorado River surrounded by open hillsides and forested mountains of the BLM and Arapaho National Forest. The Colorado River Headwaters National Scenic Byway (Highway 40) passes through town. Outdoor recreation and tourism are major contributors to the area's economy. Many of the town residents enjoy hunting, fishing, hiking, skiing, snowmobiling and other opportunities that the natural resources of the surrounding public lands provide. A survey for the Parks Master Plan found that town residents have an active lifestyle with fifty seven percent reporting that they typically recreate outdoors five to seven days per week in summer with less activity in the winter.

Because of the importance of the scenic beauty and natural setting to the lifestyle, character and economy of our town, the potential negative impacts of the large scale (27,160 acres) sale of oil and gas leases and potential development, virtually in our backyard, is unacceptable. We request that you select the No Action Alternative or, as a minimum, withdraw the parcels in Grand County from the proposed May 11, 2017 lease sale. In addition, the magnitude of the proposed lease sale of 101,816 acres of potential oil and gas development with its associated significant cumulative effects clearly call for an environmental impact statement to be prepared rather than an environmental assessment.

In particular, our concerns are with the negative effects resulting from leasing and the potential development of the following parcels many of which fall within the town's viewshed and watershed and are used by town residents: 7817, 7818, 7819, 7820, 7821, 7822, 7823, 7824, 7825, 726, 7827, 7835, 7836, 7838, 7839, 7840, 7852, 7857.

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Notwithstanding the numerous stipulations called for in the EA to minimize negative impacts we remain concerned that the impacts to the following resource elements will be a significant detriment to our town and county's well being. As described below the EA discloses the potential for numerous adverse environmental affects that are of critical concern to our community.

Air Quality

The clean air of our mountain community is important to us and we are concerned that oil and gas development operations would cause adverse effects to it.

Effects to air quality from the exploration and development of oil and gas resources resulting from the lease sale are described in the EA (p. 35) which explains that ... the future development of these leases will result in emissions of criteria (carbon monoxide, nitrogen dioxide, sulphur dioxide), HAP (chemicals that are known or suspected to cause cancer or other serious health effects), and green house gas pollutants. Subsequent development of any leases sold would result in both short and longer term emissions of pollutants... Furthermore, the EA discloses that soil disturbance resulting from construction of well pads, access roads, pipelines, power lines, and drilling is expected to cause increase in fugitive dust in the immediate vicinity of the project area and air quality may be affected by exhaust emissions.

Water Quality

The town relies on the Colorado River for its source of potable water. The EA discloses (pp.57, 79) that parcels 7818, 7819, 7823, 7824, 7825, 7826, 7827, 7835, 7836, 7838, 7839, and 7840 have lands within the Hot Sulphur Springs five mile municipal intake watershed buffer. In addition, town residents highly value the quality of the Colorado River and its tributary streams for fish habitat and other wildlife needs. We are concerned that oil and gas development resulting from the lease sale will have significant detrimental effects on water quality. The EA identifies the potential for these significant effects as shown below.

Hydrology

The EA (p. 62) explains that as a result of oil and gas exploration and development the surface hydrology could be impacted in some areas where BMPs (best management practices) fail or where intense localized thunderstorms overwhelm drainage features. Surface disturbance from oil and gas development could increase the peak flow of these events and create erosion and sediment due to increased runoff and changes in surface hydrology.

Groundwater

The EA discloses (pp.75-76) that potential impacts to groundwater resources could occur if loss circulation zones are encountered or if proper cementing and casing programs are not followed. These situations could introduce drilling fluids into the water producing formations and improper cementing and loss of casing integrity could allow migration of fluids and gas between formations. If contamination of aquifers from any source occurs, changes in groundwater quality could impact nearby springs and residential wells.

Surface water

According to the EA (pp. 81-82) impacts to surface water could be associated with surface disturbance from the construction of roads, pipelines, well pads, and power lines. Resulting soil compaction would reduce soil infiltration rates and increase runoff possibly causing downstream effects to stream channel morphology. Additionally, chemicals, produced water, oil, or other fluids accidentally spilled or leaked during the development, production, storage, and transportation could result in the contamination of both ground and surface waters.

The EA concludes that overall, it is not expected that the leasing and possible future development of parcels would cause long term degradation of ground or surface water quality below State standards.

The BLM should be aware that the Town of Hot Sulphur Springs has established a Water Supply Protection District which extends for five miles above the town's water intake on the Colorado River. The ordinance and associated maps are attached to these comments, and selected portions of the ordinance are presented below. It appears that portions of lease parcels 7819, 7838, and possibly 7840 may fall within Zone 2, and parcels 7818, 7819, 7825, 7826, 7827, 7835, 7836, 7838, 7839, and 7840 fall within Zone 3.

TOWN OF HOT SULPHUR SPRINGS, COLORADO ORDINANCE NO. 2009-2:2/363

AN ORDINANCE ESTABLISHING A WATER SUPPLY PROTECTION DISTRICT FOR THE TOWN OF HOT SULPHUR SPRINGS PROHIBITING CERTAIN ACTIVITIES IN CLOSE PROXIMITY TO THE TOWN'S WATER TREATMENT PLANT INFLOW PIPE, ESTABLISHING A PERMIT SYSTEM TO REGULATE CERTAIN ACTIVITIES WHICH CREATE A FORESEEABLE RISK OF DAMAGE OR INJURY TO THE TOWN'S WATER SUPPLY, PROVIDING PENALTIES FOR VIOLATION THEREOF, AMENDING APPLICABLE PROVISION OF THE CODE OF THE TOWN OF HOT SULPHUR SPRING, AND DECLARING AN EMERGENCY.

Section 7-6-2 Jurisdiction and Map

(1) The jurisdiction of the Water Supply Protection District shall extend over the entire territory occupied by the Town of Hot Sulphur Springs and all tributary water sources for five miles above the supplying public water systems serving the Town of Hot Sulphur Springs. The Water Supply Protection District is divided into three zones Water Supply Protection Zones 1 2 and 3 as defined in Section 7-6-3 below. The Water Supply Protection District Map accompanies this Ordinance and with all notations, references and other information shown thereon is incorporated herein as part of this Ordinance. The official Water Supply Protection District Map is located in the office of the Town Clerk.

Section 7-6-4. Prohibited and Restricted Activities

(1) It shall unlawful for any person to cause injury or damage to Public Wells or other Waterworks

(2) It shall unlawful for any person to engage in any Pollution-Hazard Activity within Water Supply Protection Zone 1 of the Water Supply Protection District. The Board of Trustees find that the conduct of any such Pollution-Hazard Activity within Zone 1 poses an unreasonable risk of the release of contaminants that could cause Pollution to the public water systems serving the Town, and due to the proximity to Public Wells and major water courses the Town would not have adequate time following any such release of contaminants to protect or provide for a substitute water supply. Consequently the prohibition of any such Pollution-Hazard Activity within Zone 1 is required to adequately protect the health, safety and welfare of the inhabitants of the Town.

(3) It shall be unlawful for any person to engage in any Pollution-Hazard Activity within Water Supply Protection Zone 2 unless such person shall prior to undertaking such activity obtain a permit for such activity under the provisions of this Article and applicable Federal and State laws and regulations. The Board of Trustees finds that the conduct of any such Pollution-Hazard Activity within Zone 2 poses a potential or threat of Pollution to the Town water supply but it may be possible to satisfactorily manage and mitigate such threat through the permit process and standards provided in this Article.

(4) In the event that any activity not included in the definition of Pollution-Hazard Activities set forth above is being conducted in such a manner that the Board of Trustees finds that a foreseeable risk of Pollution to the Town water supply exists from such activity, the person responsible for such activity shall be notified by the Town of such finding and the Town require that such activity cease and desist until such person obtains a permit for such activity under the provisions of this Article.

(5) The Town will monitor activities in Water Supply Protection Zone 3 which includes areas of the Water Supply Protection District outside the Town boundaries and will work cooperatively with other governmental authorities having land use jurisdiction in those areas to protect public water supply sources from Pollution. The permit requirements contained in Section 7-6-5 will not normally apply to activities in Zone 3; provided, however, that if Board of Trustees finds that any Pollution-Hazard

Fish and Wildlife

Town residents highly value the fish and wildlife resources of the lands surrounding and within town. The Colorado River where it passes through Hot Sulphur Springs is designated as a Gold Medal fishery by Colorado Parks and Wildlife, and the other streams that pass through proposed lease parcels are valued for their fishery. A Conservation Population of the Colorado River cutthroat trout is found in Kinney Creek which passes through parcel 7835 (EA p. 128). The public and private lands surrounding town are widely known for their herds of big game as well as other important wildlife species that are valued by hunters as well as those who just enjoy viewing spectacular wildlife and birds. Peregrine falcons and golden eagles nest on the cliffs near proposed lease parcels. We are concerned that the potential for large scale oil and gas development resulting from the proposed lease sale would have significant detrimental effects on this resource.

The EA (pp. 134-135) discloses that increased levels of development attributable to these leases has potential to contribute incrementally to declines in fish or amphibian abundance or habitat degradation caused primarily through indirect means, such as sediments liberated from road, pad, and pipeline construction and accidental release of contaminants.

With regard to terrestrial wildlife, the EA (p. 162) notes that leasing and subsequent development of one or more of the lease parcels is likely to contribute to a sustained reduction in the overall abundance of most affected species through direct and indirect impacts, but it would not be expected to elevate cumulative effects to levels that would compromise the viability of any wildlife population or the utility of broader landscapes as habitat.

Cultural Resources

The cultural heritage of Grand County is a source of pride and importance to our citizens. Much of the information about historic and prehistoric occupants of Middle Park exists in the relics of their lives which remain undiscovered. Damage or destruction of such sites would cause a loss of opportunity to learn from their discovery. Exploration and development of the proposed lease sites presents a clear danger to these cultural resources as described in the EA.

The EA (pp. 166) explains that during the development phase there is the potential for adverse impacts to known and or unknown cultural resources. Direct impact can range in severity from total obliteration of resources as a result of development related construction activities, to lesser damage to the physical attributes of a given resource.

EA (p.167) - There is a potential for severe impacts to any cultural resources that are not detectable on the surface during project specific inventory efforts. Unless the operators are very diligent and observant there is a potential for total obliteration of those resources without any awareness of the loss. Even with the best monitoring efforts there will be some loss of archaeological data as portions of the site are disturbed or destroyed during construction activities that expose the resources.

Hazardous Wastes

We are concerned that the oil and gas development on the lease parcels would produce hazardous wastes that contaminate the natural environment that is important to our town residents. The EA discloses that there is a risk of this occurring as described below.

EA (p. 168) - If exploration and development were to occur, operators would use a variety of chemicals and other materials, some of which could be classified as hazardous under various authorities, including drilling muds and additives for completion and hydraulic fracturing activities. These materials could contain various contaminants such as salts, acids, mercury, cadmium, arsenic, and hydrocarbons, among others, which, if not managed correctly, could be released to the environment. Potential impacts associated with hazardous materials could include the potential for human contact by public users and occupational exposures (e.g. inhalation or ingestion), accidental fires, surface and groundwater contamination, and impacts to vegetation and wildlife. The potential for increased spills and leaks would be proportionate with the level and age of developments that were proposed on each

of the leased parcels (e.g. higher development increases use of hazardous materials, and older equipment increases risk of equipment failure). Spill Identification, prevention, and counter measures implemented by operators during the oil and gas development process would minimize the amount and extent of a release, thereby limiting the extent of impacts.

Wilderness Characteristics

We are concerned that oil and gas development of the leases will severely damage the natural setting of the lease parcel areas. This is of particular concern where 7,000 acres of lease parcels overlap with Drowsy Water lands which have been determined to have wilderness characteristics (EA p. 170). The EA (p. 169) explains that oil and gas development can create roads, structures, traffic and lighting which can decrease wilderness characteristics such as naturalness, solitude and unconfined recreation.

Noise, Traffic and Property Values

We value the peaceful nature of the backcountry lands of the BLM and national forests and are concerned that oil and gas development as a result of the lease sales will bring a significant increase in vehicle traffic and noise from equipment operations. We are also concerned that the property values of our town will decrease due to the perception that Hot Sulphur Springs will not be an attractive place to live due to the noise and activity associated with oil and gas development occurring nearby. We are concerned that this increase in development activity will significantly change the character of our town and surrounding area.

The EA (p. 177) discloses that effects could include the potential for an increase in transportation, roads, and noise disturbance associated with development, and potential for change in property values due to development. These effects would apply to all public land users in the study area, and property owners adjacent to the proposed lease parcels.

Also, the EA (pp. 193-194) explains that in and near the proposed lease parcels it is assumed that existing roads would be upgraded and used for the majority of access to oil and gas developments and potentially new roads, typically short spur roads, would be constructed to reach well pads, pipelines, and other associated facilities. It is assumed that traffic volumes would increase in areas near and in the proposed leased parcels once these parcels are explored and developed, but which roads may be proposed for use, or if new roads would be proposed is unknown. Typically traffic volumes and heavy equipment use on roads to access and construct any new developments increase during the short 3 to 6 month duration of constructing and drilling the well pads. After interim reclamation and during the production phase traffic volumes typically decrease.

Aesthetics and Visual Quality

As previously mentioned, the natural setting and scenic landscapes that characterize Hot Sulphur Springs and the surrounding area are very important to the town's residents. This was made clear in surveys completed during two master planning projects. The significance of the outstanding scenery of Grand County was recognized by the designation of Highway 40 as the Colorado River Headwaters

Scenic Byway. Additionally, town residents enjoy the scenic views as seen from many of the back roads the run through BLM and national forest lands from which many of the lease parcels would be visible. We are very concerned that even short term development operations will destroy this beautiful setting.

The EA (pp. 182-183) discloses that it is assumed that oil and gas exploration, development, and production would occur on parcels that are leased, and the development could affect landscape character.

During construction, large trucks, cranes, and other large construction equipment would be present on the oil and gas site. Construction of the site, trenching, grading, surfacing, clearing, leveling, staging/parking area would modify the form and color of the land. During drilling, the drill rig would be lit at night, and flaring may take place, increasing its visibility on the landscape. These would be considered short-term impacts that would end when construction and drilling is completed.

Access roads connecting pads may need to be constructed (in areas where no roads presently exist) or improved upon (in areas where existing roads are present). New roads and well pads would create a linear, exposed soil route, and are often maintained for the life of the wells. Buried pipelines create linear, exposed soil routes, but are reclaimed to vegetation following construction. Production facilities such as produced water, condensate or oil storage tanks could provide a strong vertical and horizontal visual contrast in form and line to the characteristic landscape and vegetation. Processing plants can likewise have strong vertical and horizontal contrasts, and could be illuminated during the night resulting in diffuse nighttime color contrasts over the long-term and minor reduction in night sky visibility and naturalness. The magnitude of these contrasts would depend on several factors including time of day, season, density, and extent of leasable mineral production facilities.

Recreation

The spectacular outdoor recreation opportunities in the lands surrounding Hot Sulphur Springs are important to the town's residents and are the reason many of them live here. Camping, hiking, fishing, hunting, skiing, snowmobiling, nature watching and many more are the activities that both town and area residents enjoy in the BLM lands where oil and gas lease parcels are proposed. In addition, the reputation of Grand County as an outdoor recreation attraction brings people from all over the world to enjoy the place where we live. Outdoor recreation is a huge contributor to the town and area's economy. We are very concerned that the development of oil and gas operations on the proposed lease areas will significantly detract from the recreation opportunities and experiences of our residents, and will significantly hurt our local economy.

The EA (pp. 200-201) discloses that exploration and development activities may affect the recreation experiences and settings in the project area. Increased traffic on existing roads, and development of roads, well pads and pipelines in areas deemed suitable for primitive types of recreation may be detrimental to these values and the settings they are dependent on and ultimately remove opportunities for this type of recreation. ...Increased oil and gas activities in areas where hunting is the

dominant recreation use or where dispersed camping has been occurring may impact the experience those recreationalists are seeking. In addition, during oil and gas field development, when there is typically a higher presence of vehicular traffic and other activity, the public will likely be displaced from the actual sites of oil and gas infrastructure.

Indirect effects to recreation include impacts to big game which are hunted, migratory birds valued to birdwatchers, and visual resources valued to pleasure drivers and photographers, to name a few examples.

Development intensity, terrain, and proximity to main travel corridors, towns, recreation facilities, etc. would greatly influence recreation impacts. Cumulative impacts to recreation and adjacent recreation areas could be the loss of desired natural settings, the displacement of wildlife, temporary noise and lighting at night, and traffic or hazards on existing and/or designated routes. Oil and gas field development in the proposed project area, in conjunction with ongoing energy development and other surface disturbing activities, could cumulatively have a negative impact on the recreation opportunities by altering the area's setting and ability to have non-developed areas for dispersed recreation.

Conclusion

While the EA contends that the oil and gas lease sale by itself will have no direct environmental consequences, it must be assumed that exploration and development will occur to some extent as a result of this sale. In fact, the EA states this in numerous places. And it is clear that exploration and development have the potential for causing significant direct, indirect and cumulative negative effects to the environment, quality of life of area residents, and local economy. As highlighted above, the EA recognizes the potential for these significant effects of which we are highly concerned. In spite of the proposed stipulations intended to prevent or minimize negative effects, the high potential for them to occur remains and some cannot be avoided. Thus, we are opposed to the Preferred Alternative and request that the proposed parcels in Grand County be withdrawn from the proposed lease sale.



Robert McVay
Mayor

Attachments: Hot Sulphur Springs Water Protection District Ordinance
Maps of Water Protection District

**TOWN OF HOT SULPHUR SPRINGS, COLORADO
ORDINANCE NO. 2009-2:2/363**

AN ORDINANCE ESTABLISHING A WATER SUPPLY PROTECTION DISTRICT FOR THE TOWN OF HOT SULPHUR SPRINGS PROHIBITING CERTAIN ACTIVITIES IN CLOSE PROXIMITY TO THE TOWN'S WATER TREATMENT PLANT INFLOW PIPE, ESTABLISHING A PERMIT SYSTEM TO REGULATE CERTAIN ACTIVITIES WHICH CREATE A FORESEEABLE RISK OF DAMAGE OR INJURY TO THE TOWN'S WATER SUPPLY, PROVIDING PENALTIES FOR VIOLATION THEREOF, AMENDING APPLICABLE PROVISION OF THE CODE OF THE TOWN OF HOT SULPHUR SPRING, AND DECLARING AN EMERGENCY.

WHEREAS, residents and businesses within the Town of Hot Sulphur Springs rely upon surface water for their domestic water supply; and

WHEREAS, there is substantial evidence that surface water supplies across the country are being, or are at risk of being contaminated by various pollutants for industrial and other sources; and

WHEREAS, surface water pollutants often migrate considerable distance before detection in domestic water supplies; and

WHEREAS, the Colorado Legislature has conferred upon municipalities the ability to regulate and protect their water supplies within the territory five miles above their water source and to enact all ordinances and regulations necessary to carry out said authority;

NOW THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF TRUSTEES OF HOT SULPHUR SPRINGS, COLORADO, THAT:

PART I: AMENDMENT TO TOWN CODE. The code of the Town of Hot Sulphur Springs, Colorado is hereby amended by adding a new Article 7-6 to said Code entitled "Water Supply Protection District", which shall read as follows:

**Article 7-6
WATER SUPPLY PROTECTION DISTRICT**

Section 7-6-1 Intent of Water Supply Protection District.

(1) The purpose for which this Water Supply Protection District is established is the full exercise of the powers of the Town of Hot Sulphur Springs in maintaining and protecting the Town's water works from injury and its water supply from Pollution or from activities that will create a hazard to health and water quality or a danger of Pollution to the water supply of the Town. This Water Supply Protection District is created under the authority granted in Section 31-15-707(1)(b), Colorado Revised Statutes, 1973, as amended and other Colorado statutes. Further, this Water Supply Protection District and the following regulations are created for the purpose of regulating land use. The regulation of land use within the Water Supply Protection District shall be and remain the responsibility of the respective county or municipality having jurisdiction over the area in question and nothing herein shall restrict or supersede the respective jurisdiction's land use authority. The Town's authority herein shall be for the purpose of reviewing and restricting any activity within the Water Supply Protection District which creates a foreseeable risk of damage or injury to the Town's water supply. The Town's review authority within the Water Supply Protection District shall therefore be concurrent to the authority of the Town and any other governmental entity to review and / or require permits for the same or related activities regulated under any other laws or regulations.

Section 7-6-2 Jurisdiction and Map

(1) The jurisdiction of the Water Supply Protection District shall extend over the entire territory occupied by the Town of Hot Sulphur Springs and all tributary water sources for five miles above the supplying public water systems serving the Town of Hot Sulphur Springs. The Water Supply Protection District is divided into three zones Water Supply Protection Zones 1 2 and 3 as defined in Section 7-6-3 below. The Water Supply Protection District Map accompanies this Ordinance and with all notations, references and other information shown thereon is incorporated herein as part of this Ordinance. The official Water Supply Protection District Map is located in the office of the Town Clerk.

Section 7-6-3 Definitions

MS Word: Ordinance: 2009: 2009 1 2 363

1 Whenever the following words or phrases are used in this Article they shall have the following meanings:

(a) "Activity" is conduct secondary to the land use or zoning designation. Using within the context of this Article shall refer to an activity and not a right conferred by the land use or zoning designation.

(b) "Best management practice" means the most effective means of preventing or reducing harmful effects of certain activities to a level compatible with Town standards.

(c) "Foreseeable risk" means the reasonable anticipation that harm or injury may result from acts or omissions.

(d) "Person" any individual, corporation, business trust, estate trust, partnership, association or any other legal entity.

(e) "Pesticide" shall be as defined in Section 35-9-103 CRS, as amended.

(f) "Pollution" means man-made, man-induced, or natural alteration of the physical, chemical, biological and radiological integrity of water or soil.

(g) "Pollution- Hazard Activity" means any of the following activities:

(i) Constructing a sewage disposal system.

(ii) Drilling operations.

(iii) Surface and subsurface mining operations.

(iv) The storage and application of pesticides (herbicides and/or insecticides) in any manner, except for private residential or business use.

(v) The storage and application of fertilizers in any manner except for private residential or business use.

(vi) Using, handling, storing, dispensing, or transporting toxic or hazardous substances, including, but not limited to radioactive materials.

(vii) Using, handling, storing, dispensing, or transporting flammable or explosive materials, including petroleum products, except for storage of not more than twenty-five (25) gallons of petroleum products in a private home or business except for fuel in vehicular fuel tanks.

(viii) Using, Handling, storing, dispensing, or transporting organic nutrients, including phosphorous and nitrates, or engaging in activity that creates the same.

(ix) Any solid or liquid waste disposal.

(h) "Inflow pipe" surface water means any water treatment supply water to the public water system owned and operated by the Town or to any other public water system operated by a governmental entity that provides domestic water service to businesses or residences within the Town of Hot Sulphur Springs. The approximate location of existing Public Inflow is shown on the Water Supply Protection District Map. Surface water means any water flowing over the land, including the Colorado River and tributaries in the Colorado River Basin located within 5 miles of the Inflow pipe.

(i) "Sewage disposal system" means a septic tank or other facility designed and constructed for the purpose of receiving and disposing of sewage including individual septic disposal systems.

but excluding mechanical wastewater treatment plants which are governed by Section 13-3-8(9) of the Code of the Town of Hot Sulphur Springs

(j) "Water Supply Protection Zone 1 or Zone 1" means that area within a five hundred foot (500') radius of any Inflow Pipe and the area within a one hundred fifty foot 150 setback from the high water mark on each side of the Colorado River

(k) "Water Supply Protection Zone 2 or Zone 2" means that part of the Water Supply Protection District outside of Zone 1 but within the immediate surrounding watershed of the Town of Hot Sulphur Springs.

(l) "Water Supply Protection Zone 3 or Zone 3" means that area within a five mile distance above the well field supplying the public water systems serving the Town of Hot Sulphur Springs but outside of the corporate boundaries of the Town of Hot Sulphur Springs

(m) "Waterworks" means any and all components of the public water system or systems providing domestic water service to residences and businesses within the Town of Hot Sulphur Springs including but not limited to all pumps filtration facilities transmission and distribution lines and storage facilities regardless of ownership of said facilities.

(n) "Use" or "land use" is the purpose for which land or a building is designed, arranged, or intended, or the purpose for which land or a building is, or may be, occupied or maintained. "Use" or "land use" is synonymous with zoning categories such as residential commercial, industrial, or agricultural.

Section 7-6-4. Prohibited and Restricted Activities

(1) It shall unlawful for any person to cause injury or damage to Public Wells or other Waterworks

(2) It shall unlawful for any person to engage in any Pollution-Hazard Activity within Water Supply Protection Zone 1 of the Water Supply Protection District. The Board of Trustees find that the conduct of any such Pollution-Hazard Activity within Zone 1 poses an unreasonable risk of the release of contaminants that could cause Pollution to the public water systems serving the Town, and due to the proximity to Public Wells and major water courses the Town would not have adequate time following any such release of contaminants to protect or provide for a substitute water supply. Consequently the prohibition of any such Pollution-Hazard Activity within Zone 1 is required to adequately protect the health, safety and welfare of the inhabitants of the Town.

(3) It shall be unlawful for any person to engage in any Pollution-Hazard Activity within Water Supply Protection Zone 2 unless such person shall prior to undertaking such activity obtain a permit for such activity under the provisions of this Article and applicable Federal and State laws and regulations. The Board of Trustees finds that the conduct of any such Pollution-Hazard Activity within Zone 2 poses a potential or threat of Pollution to the Town water supply but it may be possible to satisfactorily manage and mitigate such threat through the permit process and standards provided in this Article.

(4) In the event that any activity not included in the definition of Pollution-Hazard Activities set forth above is being conducted in such a manner that the Board of Trustees finds that a foreseeable risk of Pollution to the Town water supply exists from such activity, the person responsible for such activity shall be notified by the Town of such finding and the Town require that such activity cease and desist until such person obtains a permit for such activity under the provisions of this Article.

(5) The Town will monitor activities in Water Supply Protection Zone 3 which includes areas of the Water Supply Protection District outside the Town boundaries and will work cooperatively with other governmental authorities having land use jurisdiction in those areas to protect public water supply sources from Pollution. The permit requirements contained in Section 7-6-5 will not normally apply to activities in Zone 3; provided, however, that if Board of Trustees finds that any Pollution-Hazard

Activity or other activity is proposed or is being conducted in any area included in said Zone 3, which presents a foreseeable risk of Pollution to the Town's water supply and which is not being effectively managed by the another governmental authority the person responsible for such activity shall be notified by the Town of such finding and the Town may require that such activity cease and desist until such person obtains a permit for such activity under the provision of this Article

Section 7-6-5 Permit and Hearing Procedure

(I) Application and Fees: An applicant for a Water Supply Protection District Permit shall submit the following to the Town:

(a) A completed application form as prescribed by the Town. If the applicant is not the owner of the subject property the owner shall also sign such application and the applicant shall set forth its interest in the proposed activity. An application will not be deemed to be complete until all information required by the Town has been submitted to the Town

(b) A full and complete description of the proposed activity for which a permit is sought, including, if applicable, a discussion of any future activity anticipated by the applicant, with respect to the subject property for which a permit may be required hereunder.

(c) Two sets of plans and specifications which shall contain the following information

(i) A vicinity sketch or other data indicating the site location and legal description for the subject property and showing the location of any Public Wells or water courses in the vicinity in relation to the proposed activity

(ii) Boundary lines of the property for which the application is sought, if applicable

(iii) Location of any buildings or structures within fifty 50 feet of the proposed activity

(iv) Accurate contours establishing the topography of existing ground.

(v) Accurate locations and volumetric data for any streams that flow through or immediate adjacent to the property whether the stream flow is continuous or seasonal.

(vi) An accurate soils geologic and natural hazards report and map, including a flood plain map, if applicable. The information provided shall include soil types and geologic formations affecting tributary and non-tributary water sources

(vii) Elevations dimensions location extent and the slopes of all proposed excavating, grading, filling or surfacing shown by contours and/or other means.

(viii) Details of all drainage devices in connection with the proposed activity.

(ix) A statement of the amount and location of any matter proposed to be deposited in areas other than that shown on the plans.

(x) Nature and location of existing vegetation and a statement as to the effect of the proposed activity on such vegetation.

(d) Identification of any activity that may present or create a foreseeable risk of Pollution to the water supply of the Town of Hot Sulphur Springs along with a specific description of the measures, including best management practices specific Federal and State laws and regulatory guidelines, and industry standards that will be employed by the applicant to obviate such risks.

(e) Any and all additional information may be specifically requested by the Town, including but not limited to, the following:

- (i) A map showing the drainage pattern and estimated runoff of the area of the proposed activity.
- (ii) Revegetation, stockpile management, and reclamation plans and specifications including a timetable for the same.
- (iii) A soils analysis including the nature classification infiltration capacity, distribution and strength of existing soils, and recommendations for earth moving procedures and other design criteria.
- (iv) A geologic analysis of the site and adjacent areas and its impact on the proposed activity.
- (v) An operation and maintenance analysis including reporting requirements and schedules of the proposed activity.
- (vi) Water use analysis, including legal basis, source, quality, amount of consumptive use, impact on ground water, and discharge characteristics.

(f) Each applicant shall submit a Water Supply Protection District application fee to the Town at the time of filing such application. The applicant shall be assessed a fee sufficient to cover the costs of publication, hearing, processing, administration, inspection and enforcement of such requested permit. The minimum fee hereunder shall fixed by resolution of the Board of Trustees. In the event the fee charged by the Town at the time of application is determined to be insufficient to cover the Town's costs, the Town shall have the right to charge the additional fee prior to the issuance or denial of any permit. No Water Supply Protection District Permit shall be issued until all such assessed fees have been paid.

(2) Review Analysis and Risks

(a) Within thirty (30) days following receipt of a completed application and following a site inspection if necessary as determined by the Town, the Town staff shall review the application and prepare an analysis of the proposed activity, including a discussion of any factor that may present or create a foreseeable risk of Pollution to the water supply of the Town along with an analysis of the measures, including best management practices, if any, that are proposed by the applicant to obviate such risks and submit such analysis to the Board of Trustees.

(b) In undertaking the analysis of any proposed activity the following factors, among any others that may be deemed relevant, shall be considered:

- (i) Nature and extent of the proposed activity.
- (ii) Proximity to existing Public Wells and water courses.
- (iii) Drainage patterns and control measures.
- (iv) Soil criteria.
- (v) Geologic factors.
- (vi) Point source effluent emissions into water or groundwater.
- (vii) Ambient and non-point source effluent emissions into water or groundwater
- (viii) Vehicular and motorized activity.

(c) The Town staff may classify in writing an application as "minor impact" based upon the analysis set forth above if the proposed activity clearly does not present or create a foreseeable risk of Pollution to the water supply of the Town. Within thirty (30) days after any such minor impact classification, the Board of Trustees shall conduct the hearing required hereunder and render a decision regarding the issuance or denial of a Water Supply Protection District Permit to

such applicant. The failure of the Board of Trustees to render such decision within the time limits set forth shall be deemed considered affirmative action on the issuance of the requested permit for any application as "minor impact."

(d) The Town staff may classify in writing an application as "no impact" in the following fashion. A potential applicant for a Water Supply Protection District Permit may apply for a "no impact" finding relative to the proposed activity. Such application shall be accompanied by such information, in writing, as the Town staff needs to determine whether a "no impact" finding is warranted. Such information may be less than is required under Subsection (1) above, and required permit fees may be waived. Upon such application, the Town staff shall determine whether the proposed activity is of a type or location that no negative impact on the Town's water sources is reasonably foreseeable. If such a "no impact" finding is made, the Town staff shall immediately issue a Water Supply Protection District Permit for the proposed activity. After issuance of said permit, the Town staff shall report same to the Board of Trustees at its next regular or special meeting and shall also keep a record of such "no impact" permits for the purpose of assessing the cumulative impact of "no impact" activities. If the Town staff does not make a "no impact" determination, that decision may be appealed to the Board of Trustees at its next regularly scheduled meeting. At said meeting the Board may, based upon the same standards as set forth above, grant a "no impact" permit for the proposed activity, or uphold the Town staff's determination.

(3) Hearing Upon receipt of the analysis from the Town staff, the Board of Trustees shall conduct a public hearing to review the application and analysis and shall render a decision regarding the issuance or denial of a Water Supply Protection District Permit to such applicant within three (3) months after the conclusion of such hearing, unless the activity requires approval of permit from any agency of the County, State, or Federal Government and which approval or permit procedure exceeds the time requirements of this Article, then, and in that event, the Town shall have an additional sixty (60) days following the final decision of such County, State, or Federal government approval or permit procedure to conduct the public hearing required hereunder and render a decision regarding the issuance or denial of a Water Supply Protection District Permit to such applicant. The Board of Trustees may require additional information from any applicant, in which event the public hearing and decision may be delayed or continued until receipt of such additional information.

(4) Standards for Issuance of Permit: Water Supply Protection District shall be issued when the Board of Trustees finds that the applicant has sustained the burden of proof that the proposed activity including best management practice, if any, does not present or create a foreseeable risk of Pollution to the groundwater within the Water Supply Protection District. A Water Supply Protection District Permit shall be denied when the Board of Trustees finds that the applicant has not sustained such burden of proof.

(5) Permit Conditions. The Board of Trustees in issuing any Water Supply Protection District Permit may prescribe any conditions it may deem necessary to affect the intent of this Water Supply Protection District. The Board of Trustees may require any applicant to post surety bond or cash in an amount sufficient to ensure compliance with the Water Supply Protection District Permit, including but not limited to, the cost of maintenance, operation, revegetation, reclamation, remediation, and other requirements of proposed activities. The Board of Trustees may release to the applicant portions of any such bond or cash from time to time when no longer necessary to ensure compliance with the Water Supply Protection District Permit.

(6) Duration of Permit. A Water Supply Protection District Permit shall remain valid so long as the applicant complies with the approved terms and conditions of the Permit, unless a specific time limit for the activity is set forth as part of the permit approval. If an approved activity for which a Water Supply Protection District Permit is issued is not commenced within nine (9) months from the date of issuance of such Permit, or if the activity is discontinued for any reason for a period of one (1) year, the Permit shall be deemed to have expired, unless otherwise provided in the Permit itself.

(7) Notice of Hearing. Notice of any public hearing hereunder shall be given at least fourteen (14) days in advance of the public hearing by not less than one (1) publication in a newspaper of general circulation in the Town of Hot Sulphur Springs or by other such means of publication as approved by the Board of Trustees for official publications.

(8) **Joint Review Process.** Any permit required hereunder can be reviewed and issued pursuant to a joint review process with any other government entity or agency charged with the review and approval of the same activity or activities.

Section 7-6-6 Enforcement.

(1) **Right of Entry.** Whenever necessary to make an inspection to enforce any provision of this Article an authorized preventative of the Town may go upon any land at any reasonable time to inspect the same or to perform any duty imposed hereunder provided that he identify himself and if such land be unoccupied that he shall make a reasonable effort to locate the applicant or other persons having control of such land to notify them of such entry.

(2) **Stop Work Order.** Whenever any work or activity is being done contrary to the provisions of this Article, or in violation of the terms of any Water Supply Protection District Permit issued hereunder, the Town or its authorized representatives may order the work stopped by notice in writing served on the applicant or any person engaged in or causing such activity to be done, and any such person shall cease such activity until authorized by the Town to proceed. The Town shall reserve the right to revoke or suspend any permit issued hereunder if work or activity is not done in accordance therewith.

Section 7-6-7 Regulations.

(1) The Board of Trustees may issue regulations providing guidelines and criteria to carry out the purposes of this Article.

Section 7-6-8, Activity in Progress.

(1) A lawful use or activity being carried on in or on any buildings structures or land at the time of the enactment of this Article may be continued even though it does not conform to the requirements of this Article. Ordinary repairs and maintenance of any existing building, structure or land shall be allowed. Any change, expansion, alteration, or enlargement of such existing lawful use or activity shall be subject to all requirements of this Article.

Section 7-6-9 Violation and Penalty.

(1) **Violations.** Violations of the Provisions of this Chapter shall be a misdemeanor and punishable by a fine not to exceed one thousand dollars (\$1000), or by imprisonment for a period not to exceed one year, or by both such fine and imprisonment. Each day that such violation continues to exist shall be considered a separate offense.

(2) **Actions.** Any activity which is continued, operated or maintained contrary to any provision of this Article is unlawful. Town of Hot Sulphur Springs may institute injunction, abatement or any other appropriate action to enjoin, abate or remove such violation in which event the Town shall be entitled to recover court costs and attorney fees.

(3) **Remedies.** The remedies herein provided shall be cumulative and not exclusive and shall be in addition to any other provided by law.

PART 2 REPEAL. Any and all existing ordinances of the Town of Hot Sulphur Springs covering the same matters as embraced in this Ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of the Ordinance are hereby repelled; provided, however, that such repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance.

PART 3 SEVERABILITY. If any section, subsection, clause or phrase of this Ordinance is, for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Town of Hot Sulphur Springs hereby declares that it would have adopted this Ordinance, and each section, subsection, clause or

phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases thereof be declared unconstitutional.

PART 4 DECLARATION OF EMERGENCY: EFFECTIVE DATE. Because of the immediate risk to the municipal water supply if unregulated hazardous activities are allowed to proceed in the Water Supply Protection District, it is hereby declared that an emergency exists, that this Ordinance is necessary to the immediate preservation of the public peace, health and safety, and that it shall be in full force and effect immediately upon adoption.

INTRODUCED, READ, PASSED AND ADOPTED AS AN EMERGENCY MEASURE AND ORDERED PUBLISHED BY A VOTE OF NOT LESS THAN $\frac{1}{2}$ OF ALL MEMBERS OF THE BOARD OF TRUSTEES, 6 IN FAVOR, 0 AGAINST, and 0 ABSTAINING, OF THE TOWN OF HOT SULPHUR SPRINGS, COLORADO, AT A SPECIAL MEETING HELD ON THE 5th DAY OF FEBRUARY, 2009.

TOWN OF HOT SULPHUR SPRINGS

By: *H. Deputy*
Hershal Deputy, Mayor

I hereby certify that the above Ordinance was introduced and adopted by the Town Board of Trustees of the Town of Hot Sulphur Springs, Colorado, at its meeting of February 5th, 2009, and ordered published by Sky Hi newspaper on February 19th, 2009.

SEAL

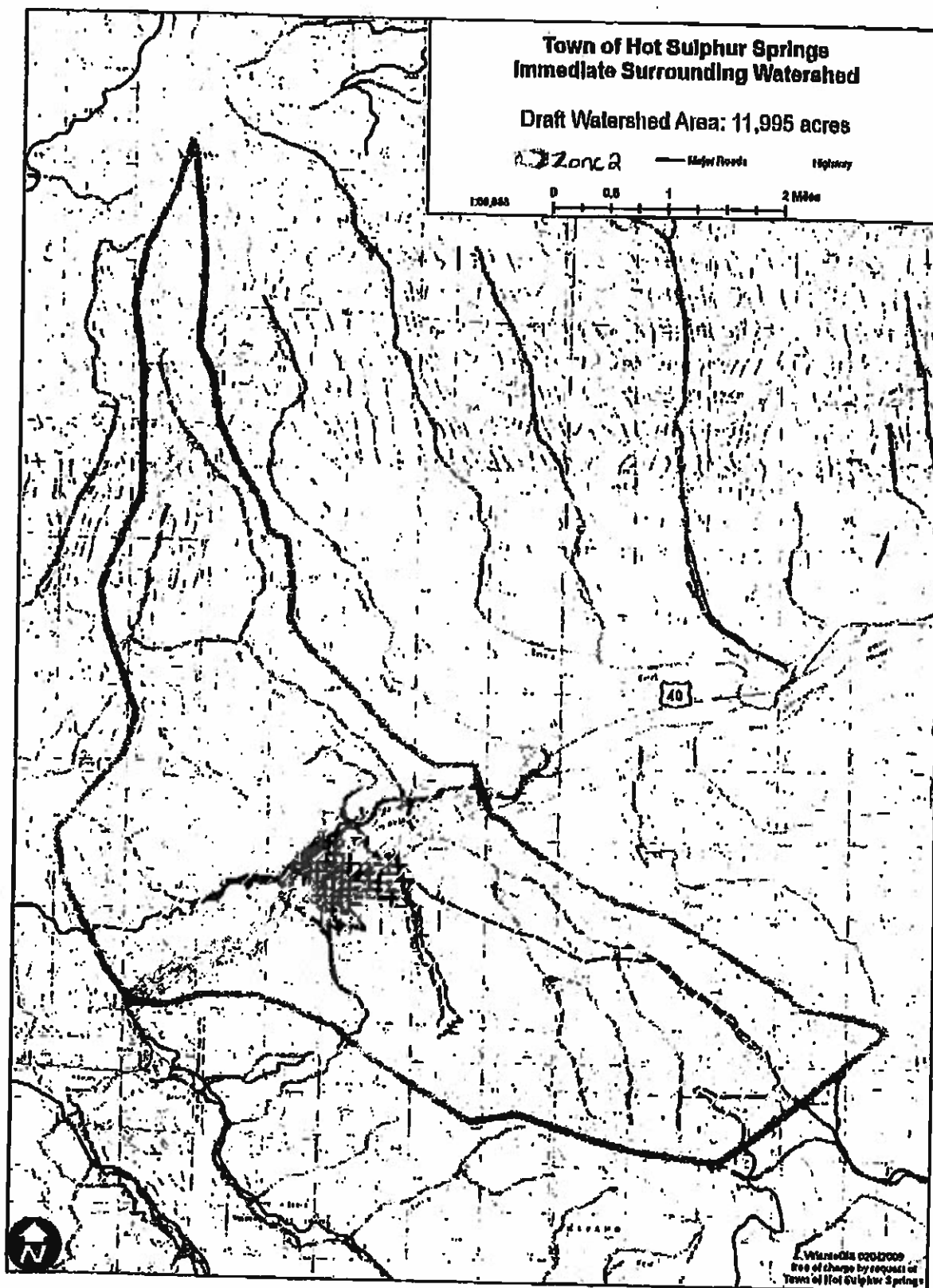


ATTEST:

By: *Sandy White*
Sandy White, Town Clerk

Publication Date: February 19th, 2009





Transmitted to: 11/15/95 07:02:30Z



